

# 10★Eight

In Service for

Arkansas  
Attorney General  
Mike Beebe

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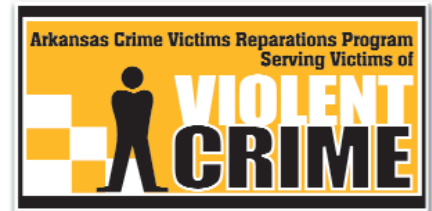
## Dear Ten-Eight Reader:

I want to take this opportunity to thank each one of you for all you do to protect and serve our communities throughout Arkansas all year long. The upcoming holiday season is often a difficult time for law enforcement – a season for criminals to prey upon people's spirit of giving.

My office is here to support your efforts, and we have materials available to help you in educating the public to protect against becoming victims of fraud and crime. Thanks to all of our law-enforcement officers whose visible presence and diligence sometimes go unnoticed and underappreciated. On behalf of everyone at the Attorney General's Office, best wishes for wonderful holidays and a Happy New Year!

Sincerely,

Mike Beebe



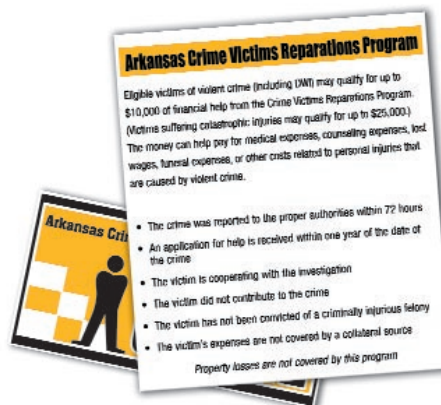
The Arkansas Crime Victims Reparations Program (ACVRP) provides compensation for crime victims' unexpected expenses, including medical treatment, mental-health counseling, lost wages, replacement services, and funeral expenses. Most awards are limited to \$10,000 or less. However, for victims receiving catastrophic injuries resulting in total and permanent disability, the maximum award can be as high as \$25,000.

One of the most innovative aspects of the ACVRP is that a portion of the reparations funding comes from fines imposed on the convicted criminals. Additionally, court costs and fees are a major revenue source for the program.

In 2003, the ACVRP compensated more than 2,600 victims of crime for a total amount of compensation of over \$3.3 million. This year, the

program already has assisted more victims than last year and is on track to award even more money. Each year, Arkansans take advantage of the program in greater numbers due, in large part, to law enforcement and victim-assistance personnel helping to make sure that all victims are aware of the program.

One way in which law-enforcement officers can help to spread the word of the program's availability is by giving victims a copy of the ACVRP pocket card. This card outlines the eligibility requirements and provides contact information for the program to victims. The cards are small enough to fit in



a pocket and are available free of charge to law-enforcement officers and others who work with victims. If you are interested in receiving these cards, so that you can better inform victims of available services, please contact the program staff at 1-800-448-3014.

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# 2004 OUTSTANDING LAW ENFORCEMENT Officers of the Year Awards

At the Attorney General's second-annual Law Enforcement Summit, hosted in October, General Beebe proudly presented the Outstanding Law Enforcement Officers of the Year Awards.

A panel of officers from across Arkansas chose one winner from each congressional district and an overall winner. This year, there was a two-way tie in District 1, and an entire S.W.A.T. team won the award in District 3. Nominees were judged for individual acts of valor and for overall job performance. The 2004 winners were the following:

**District 1 (Tie) – Deputy Toni Moss**, Jackson County Sheriff's Office, and **Corporal David Evans**, Arkansas Game and Fish Commission;

**District 2 – Captain Sammie Johnson**, Yell County Sheriff's Office;

**District 3 – S.W.A.T. Team and Field Deputies**, Benton County Sheriff's Office;

**District 4 – Corporal Charlie Edmonson**, Arkansas State Police;

The recipient of the 2004 Outstanding Law Enforcement Officer of the Year was **Corporal Gary Crews** of the Fayetteville Police Department.



**OVERALL**



**DISTRICT 1**



**DISTRICT 1**



**DISTRICT 3**



**DISTRICT 4**

"These awards honor only a few officers, but they help to express our gratitude to the thousands of Arkansans who dedicate their lives to enforcing our laws and protecting our citizens," Beebe said. "These courageous men and women exemplify officers

who will go that extra step, often risking their personal safety, to get the job done."

This year's Law Enforcement Summit focused on preventing and investigating crimes against children, especially those involving child fatalities. Two-hundred twenty-eight law-enforcement personnel from 41 counties came to Little Rock to attend the event.



# SCHOOL BUS SAFETY

GUEST COLUMN | By Bob McMahan | Prosecutor Coordinator

After the tragic death of a Saline County elementary-school student on September 28, 2004, Senator Shane Broadway organized a meeting at the State Capitol to address various issues regarding school-bus safety. The meeting was held on Monday, October 26, 2004, and attendees included representatives from the Arkansas Prosecuting Attorneys Association, Arkansas State Police, Arkansas Association of Pupil Transportation, Arkansas Association of Chiefs of Police, Arkansas Sheriffs Association, Arkansas School Administrators Association, and the Bryant and Benton School Districts.

Prior to the meeting, the State Department of Education instituted a survey and gave it to bus drivers in the State's 254 school districts. Drivers in 114 districts responded by reporting 858 incidents of motorists passing stopped school buses, all in one day. Pursuant to Arkansas Code Annotated § 27-51-1001, passing a school bus is an unclassified misdemeanor punishable by a fine of not less than \$35 nor more than \$500, or confinement in the county jail not to exceed 90 days, or both a fine and imprisonment.

I will be working with other members of the Arkansas Prosecuting Attorneys Association and with Mike Simmons, Director of School Bus Safety for the Arkansas Department of Education, to develop a standardized reporting form that will enable bus drivers to log information quickly from incidents they witness. This form will allow drivers to record necessary information that will be presented to local prosecuting attorneys through signing an affidavit and filing a complaint.

Additional suggestions discussed during the meeting included the creation of a felony negligent-homicide provision specifically to address incidents involving deaths resulting from violations of A.C.A. § 27-51-1001 and to increase the minimum penalties under that same section. If you have additional suggestions to improve school-bus safety for our children, please give me a call at (501) 682-3671.

## ARKANSAS SUPREME COURT AFFIRMS THAT ID REQUEST AT BUS STOP IS NOT A SEIZURE

In June 2001, two Little Rock Police detectives were working drug interdiction at the Greyhound Bus Terminal. One detective thought it probable that they would see Anarian Chad Jackson who often used the terminal and was wanted on felony warrants. When Jackson got off a bus, he appeared startled and hesitated when he saw the other detective with a drug dog. As he approached the dog, he moved a black bag he

was carrying from his right to his left side and held it up high to avoid the dog. As Jackson walked to the terminal, he looked back at the detective and the dog. When the other detective approached Jackson and identified himself with his badge, Jackson agreed to speak to him.

Although the detective initially did not recognize Jackson, when he gave the detective identification, the detective recognized it as an alias by which Jackson was known. Knowing Jackson to be dangerous, the detective asked him if he was carrying any guns or drugs, and Jackson said that he was not. The detective then asked Jackson for permission to search the black bag, and

Jackson agreed. However, Jackson then began rummaging through the bag, and the detective again asked to search it himself. Jackson responded by putting the bag down and stepping away from it. At that point, the detective arrested him.

Jackson later sought to suppress evidence seized following this arrest, but the trial courts denied his motions, and he was tried and convicted on drug-and-homicide charges. On appeal, Jackson claimed that the officers' approach of him in plain clothes with a drug dog was a seizure for which they had no suspicion. The Arkansas Supreme Court disagreed, noting that not all conversation between the police and citizens qualifies as a seizure. After reviewing federal and state cases, the Court concluded that, as he got

off the bus, Jackson's demeanor and behavior gave the detectives objective reasons in support of their drug-interdiction efforts to request that he identify himself.

The Court specifically rejected Jackson's claim that the detectives could not ask that he identify himself unless they were investigating him for a specific crime. Although the Court noted that Arkansas Rule of Criminal Procedure 2.2 might restrict police conduct more narrowly than the Fourth Amendment because it requires that officers request information only in the service of the investigation or prevention of crime, the detectives here certainly were doing so by their drug-interdiction efforts. Thus, the Court held that their request for Jackson's identification did not constitute an impermissible seizure.



# Opinions of the **ATTORNEY GENERAL**



## **OPINION NO. 2004-188**

**Question 1:** Are the provisions of A.C.A. § 5-65-208(a), governing the testing of a driver's blood, breath, or urine when there is an accident resulting in a death or possible death, mandatory? Or, does the suspect's refusal under A.C.A. § 5-65-205 essentially nullify the testing provisions of A.C.A. § 5-65-208?

**Response to Question 1:** The provisions of A.C.A. § 5-65-208(a) are mandatory. It is not clear under state law whether a driver's refusal would nullify these provisions, but it is my opinion that if a court were faced with the question, it would hold that a refusal does not nullify them.

**Question 2:** If A.C.A. § 5-65-208 is not nullified by A.C.A. § 5-65-205, what action should police take to enforce A.C.A. § 5-65-208's provisions?

**Response to Question 2:** The police must comply with the Fourth Amendment.

**Question 3:** If the response to Question 2 states that force is permitted with or without a warrant, are there any civil-liability issues for police agencies enforcing the requirements of A.C.A. § 5-65-208, assuming it is mandatory?

**Response to Question 3:** The answer depends on the type of liability in question. Police officers are entitled under the law to certain, limited immunity.

**Question 4:** If A.C.A. § 5-65-208 is mandatory, may the investigating officers and prosecutors use the A.C.A. § 5-65-208 test results to prosecute criminal offenses, or is the purpose of this particular law solely for gathering statistics?

**Response to Question 4:** The law does not clearly answer this question and legislative clarification is needed. The plain language seems to indicate that the results cannot be used in this manner, but this conflicts with other relevant statutes.

**Question 5:** Are formal charges under A.C.A. § 5-65-205 still permitted? What is the sanction for refusal to submit, other than license seizure and administrative action?

**Response to Question 5:** Yes. Regarding sanctions, see A.C.A. § 5-65-205, A.C.A. § 5-65-402, and A.C.A. § 5-4-201.

## **OPINION NO. 2004-237**

**Question:** Pursuant to the provisions of A.C.A. § 12-12-104, regarding the retention of physical evidence in sex-offense prosecutions and the statutory definitions for "sex offense" and "violent offense," as amended and/or repealed by legislation enacted during the 84th General Assembly, what are the applicable definitions of "sex offense" and "violent offense" for purposes of a law-enforcement agency's compliance with A.C.A. § 12-12-104?

**Response:** The applicable definitions are those that were in effect in 2001 at the time of the enactment of A.C.A. § 12-12-104. However, because these statutory definitions are no longer a part of the Arkansas Code, an amendment of A.C.A. § 12-12-104 to clarify the applicable definitions of these terms is advisable.

## **OPINION NO. 2004-243**

**Question:** Can you be charged for public intoxication while you are in your yard/property?

**Response:** It depends upon the facts surrounding the arrest, but in my opinion, it is unlikely that such a charge would be upheld unless the facts show that the location was a place to which the public or substantial numbers of people have access. See A.C.A. § 5-71-212, A.C.A. § 5-71-101(6), and Weaver v. State, 326 Ark. 82, 928 S.W.2d 798 (1996).

## **ARRESTEE NEED NOT BE IN VEHICLE When Approached by Police in Order for Vehicle to Be Searched Incident to Arrest**

More than 20 years ago, in New York v. Belton, the United States Supreme Court adopted the bright-line rule that when a law-enforcement officer lawfully has arrested an occupant of an automobile, the Fourth Amendment allows the officer to search the passenger compartment of that automobile incident to the arrest. In the recent case of Thornton v. United States, the Supreme Court extended that rule, holding that an officer can search an automobile recently occupied by an arrestee even when the officer does not make contact with the arrestee until the arrestee already has gotten out of the automobile. In reaching this conclusion, the Court noted the need for a clear rule that is easily applied by the police. It also noted that it was "reasonable" to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment of an automobile recently occupied by an arrestee.

Although in recent years the Arkansas Supreme Court has decided that the Arkansas Constitution provides different protections than the Fourth Amendment to the federal Constitution, the Arkansas Supreme Court is not likely to decide this issue differently than the United States Supreme Court did in Thornton. Thornton follows New York v. Belton. In several recent cases, the Arkansas Supreme Court has stated its approval of Belton, the case's "workable" bright-line rule, and the Court's unwillingness to develop a different rule under the Arkansas Constitution. For that reason, Thornton not only reflects the law under the Fourth Amendment, but also likely reflects it under the Arkansas Constitution as well.



# Resources Available through

## THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN



As the State's clearinghouse for missing children, the Office of Attorney General Mike Beebe works closely with the National Center for Missing and Exploited Children (NCMEC). NCMEC serves as a resource for law enforcement in all areas of investigation dealing with missing-and-exploited children. Specifically, NCMEC provides technical assistance, training, and educational materials to help in law-enforcement investigations. Below are just a few of their resources. More resources and training opportunities can be located at [www.missingkids.com](http://www.missingkids.com).

**Child Sexual Exploitation Investigative Assistance** - NCMEC's Exploited Child Unit provides assistance to law enforcement with child-exploitation investigation and prevention projects.

**Cybertipline** - Available to law enforcement and the public for reporting incidents of child-sexual exploitation via the Web.

**Legal Resources for Child Sexual Exploitation Cases** – Provides technical assistance to prosecutors and investigators involved with issues of child exploitation, from search and seizure of evidence to trial strategies.

**Family Advocacy Services** – Provides technical assistance, referrals, and crisis intervention in cases of extra-familial exploitation.

**Team ADAM** - On-site response and support system that provides assistance to local law-enforcement agencies in missing-children cases.

**Team HOPE** - Provides peer support to families of missing children.

**24-Hour Hotline** - 1-800-THE-LOST

**Age Progression and Facial Reconstruction Services** – Makes available computerized age progression in photographs of long-term missing children.

**Domestic Abduction Case Assistance** - Provides critical information and assistance in domestic-abduction cases.

**Family Reunification Services** - Assists families in reunifications.

**International Abduction Assistance** – Provides technical assistance in prevention, as well as civil and criminal aspects, of abduction.

**LOCATOR** - Distributes resources to law enforcement to speed the dissemination of posters of missing children.

Additionally, publications can be obtained about a variety of topics, including:

**Child Molestation;**

**Child Pornography;**

**Family Abductions;**

**International Abductions;**

**Internet Safety;**

**Just in Case**–Series (Tips and guidelines dealing with babysitters, runaways, grief, family separation, daycare, testifying);

**Know the Rules**–Series (Safety tips for school, holidays, traveling unaccompanied, amusement parks, home alone, youth sports).



# ARKANSAS LAW ENFORCEMENT POCKET MANUAL

Attorney General Mike Beebe is pleased to announce the availability of the second edition of the Arkansas Law Enforcement Pocket Manual to officers in the State. We hope the manual will be a valuable tool. Although the number of manuals is limited, we will attempt to give a copy to every law-enforcement officer in Arkansas.

Please use the form below to order the number of copies needed for the officers in your agency. If you have any questions, please call Carol Robinson at 1-800-448-3014 or 501-682-3654.

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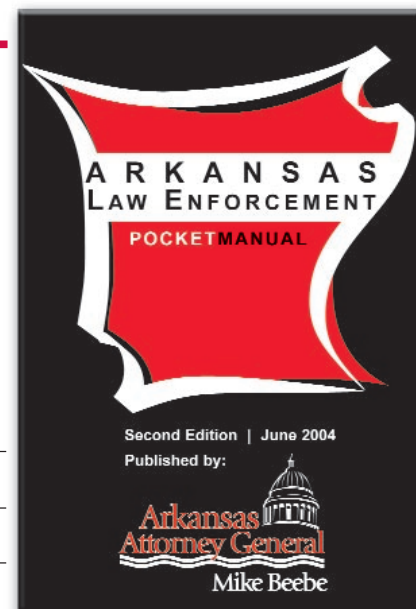
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